

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 Before The Honorable Vince Chhabria, District Judge  
4

5 KADREY, et al., ) No. C 23-03417-VC  
6 Plaintiffs, )  
7 vs. )  
8 META PLATFORMS, INC., )  
9 Defendant. )  
10 \_\_\_\_\_ )

11 San Francisco, California  
12 Friday, September 20, 2024

13 TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND  
14 RECORDING 1:03 - 2:00 = 57 MINUTES

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1 Friday, September 20, 2024

1:03 p.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: Now calling solo case 23-3417, Kadrey  
5 et al. versus Meta Platforms, Inc.

6 Will counsel please state your appearances for the  
7 record, starting with the Plaintiff?

8 MR. SAVERI: Joseph Saveri for the Plaintiffs.

9 THE COURT: Hello.

10 MR. BUTTERICK: Hello. Good afternoon, your  
11 Honor. Matthew Butterick for the Kadrey Plaintiffs.

12 THE COURT: Hi.

13 MS. DJORDJEVIC: Good afternoon, your Honor. Nada  
14 Djordjevic for Ms. TerKeurst.

15 MR. SWEATMAN: Good afternoon --

16 THE COURT: Hi.

17 MR. SWEATMAN: -- Alex Sweatman on behalf of  
18 Plaintiffs, Clobes and Diaz, Hwang, Clam, Snyder, Woods and  
19 Greer and Coates.

20 THE COURT: Hello.

21 MR. GHAJAR: Good afternoon, your Honor --

22 MS. HARTNETT: This is Kathleen Hartnett for  
23 Defendant Meta.

24 THE COURT: Hi.

25 MR. GHAJAR: Good afternoon, your Honor. Bobby

1 Ghajar on behalf of Defendant.

2 THE COURT: Hi.

3 MR. LAUTER: Good afternoon, your Honor. Judd  
4 Lauter on behalf of Defendant.

5 THE COURT: Hi.

6 Okay. Is that everybody? I think that was everybody.

7 Okay. So, let me -- let me start I guess with the  
8 Plaintiffs. This case, at least as I understand it, is  
9 mostly about -- or maybe entirely about the question of fair  
10 use. So, what -- what information, what facts are you  
11 trying to gather that you don't have now that is relevant to  
12 the question of fair use?

13 MR. SAVERI: Your Honor, this is Joseph Saveri on  
14 behalf of the Plaintiffs. I think that he -- in terms of  
15 the fair use defense, there are four elements.

16 THE COURT: Well -- sorry. Hold on a second.  
17 We're getting some echoing from the court reporters. Okay.  
18 Thank you.

19 Sorry.

20 MR. SAVERI: Is it me, your Honor? I can't tell.

21 THE COURT: No, it wasn't you. It was the court.

22 MR. SAVERI: Okay. So, with respect to the fair  
23 use defense, there are four elements, right. Well, one --  
24 with respect to -- we don't really know right now whether  
25 the Defendants are going to contest all four elements. I

1 think one of the things I'd like to get some clarity on is  
2 whether they are going to in fact contest the second and  
3 elements. I think the factual dispute or the legal dispute  
4 centers on the first and the fourth element of the fair use  
5 defense.

6 And with respect --

7 THE COURT: Not really -- they're more factors  
8 than elements, right? It's a non-inclusive list to factors  
9 that you consider --

10 MR. SAVERI: Fair enough, your Honor, but there  
11 are --

12 THE COURT: Anyway. Okay. The first and fourth.

13 MR. SAVERI: -- four, your Honor. And we don't  
14 know if the second and third are really at issue here, and  
15 whether he need to prepare a response to them. I think  
16 that's really what I'm getting at.

17 So with respect to the first, one question we generally  
18 is, which of the -- which databases were pirated, taken? We  
19 have an issue that's come up in discovering last week that  
20 the case looks to be bigger than we pled.

21 But with respect the legal and factual issues, okay,  
22 there is information that we need to find out about intent.  
23 That's one of the factors that -- one of the facts are part  
24 of the first factor. Another is evidence that goes to  
25 convertiality. That's another factor under one.

1 THE COURT: Well, can you be a little more --  
2 could you -- sorry. That's all a little bit vague. Could  
3 you be a little bit more specific about what is you're  
4 trying to find out that you haven't been able to find out  
5 about thus far?

6 MR. SAVERI: Sure, your Honor. With respect --

7 THE COURT: Right. Because intent -- I mean, they  
8 -- commercial use, I mean we know, right, are you talking  
9 about the use of the copyrighted works? I thought everybody  
10 sort of agreed about the use of the copyrighted works. That  
11 they're -- they were available on a database, and that the  
12 database was not authorized to make them available.

13 That Meta acquired them from that database, then Meta  
14 fed the stuff from the database into the large language  
15 model. And that of course the large language model is for  
16 commercial use.

17 So, I -- to use utter the phrase "commercial use" or  
18 intent, I mean, I -- that doesn't help me understand what  
19 information --

20 MR. SAVERI: Okay.

21 THE COURT: -- you're trying to find that you  
22 haven't been able to find and whether it's relevant to the  
23 fair use inquiry.

24 MR. SAVERI: Okay. So let me try to drill down  
25 and be granular and specific about that to answer the

1 (indiscernible). So, for example, one question that has to  
2 do with intent. And that evidence of intent includes, among  
3 other things, whether Meta knew that the works that they  
4 were using for the large language models were pirated. And  
5 that despite that or with that information, they  
6 nevertheless said, we're going to go forward and take our  
7 clients' copyrighted material.

8 That evidence of intent goes to the first factor, and  
9 it's recognized by the Supreme Court in the most recent Andy  
10 Warhol case. So it's that evidence of intent on -- another  
11 way to think about it is, scienter. That's another way of  
12 thinking about the same idea. That's the subject matter.

13 I think that the information that goes to that comes  
14 from -- from what I -- basically two sources. Business  
15 records will evidence that, and there's (indiscernible)  
16 testimony that will evidence that. Of course those two  
17 should be (indiscernible), and one of the things that's  
18 important, your Honor --

19 THE COURT: Well, I'm -- Mr. Saveri is coming in  
20 and out for me. Is he coming in and out for everybody else?

21 MR. SAVERI: -- evidence of intent --

22 MR. BUTTERICK: Yes, your Honor.

23 MR. SWEATMAN: Yeah.

24 THE COURT: Mr. Saveri, you're cutting in and out,  
25 unfortunately.

1 MR. SAVERI: Limited to (indiscernible) --

2 THE COURT: Mr. Saveri, you're going to have to  
3 find a different connection, because you're cutting in and  
4 out.

5 MR. BUTTERICK: Until mister -- your Honor, I can  
6 pick up where Mr. Saveri was speaking as far as his first  
7 factor, right. I mean, as you mentioned, commercial use,  
8 good faith --

9 MR. SAVERI: Go ahead, Mr. Butterick.

10 MR. BUTTERICK: Yeah. Under the Harper and Row v.  
11 Nation Enterprises, right, good -- fair use presupposes good  
12 faith. So as Mr. Saveri was saying, evidence of intent of  
13 the actions that were undertaken, how did these datasets  
14 arrive in Meta in the first instance?

15 And then, as he was alluding, transformative use,  
16 right, which is the Warhol case and the intended type of use  
17 of (indiscernible) material.

18 THE COURT: Well, transformative use, I mean  
19 there's not going to be a dispute about that, is there?

20 MR. BUTTERICK: Can you elaborate?

21 THE COURT: I mean, you're not -- you're no longer  
22 pursuing a claim that the output from the large language  
23 model resembles the -- the works that your clients have  
24 protected, are you?

25 MR. BUTTERICK: That's true. That's not a part of



1 the infringement claim. The infringement claim focuses on  
2 the making of copies at the input stage, at the training  
3 stage. And I think there is very much a question of whether  
4 that's a transformative use. Obviously, it would not --  
5 cases out there be -- excuse me. I'm pulling it up right  
6 here.

7       The -- yeah, I think there is an open question though  
8 about whether this is -- you know, taking all of these works  
9 and turning it into sort of copyright sausage in the form of  
10 these language models is transformative because it's -- you  
11 know, it has nothing to do with the original works. It  
12 doesn't add to them. It doesn't critique them. It doesn't  
13 add to their value at all.

14           THE COURT: But do you need any discovery on that?  
15 I mean, do we -- we know what -- to use your phrase, turning  
16 it into copyright sausage. I mean, we know that your  
17 clients works with gazillions of other works, are going in  
18 and making this copyright sausage. I mean, do -- is there  
19 any discovery that you need to better understand that? And,  
20 if so, what is it?

21           MR. SAVERI: Your Honor --

22           MR. BUTTERICK: I think that we are -- go ahead,  
23 sir.

24           MR. SAVERI: Your Honor, I'm sorry about my  
25 connection. So there are -- there are documents, right?

1 And just so we're clear about where we are on the documents,  
2 the ESI that we've received from the custodians that we  
3 received, were entirely chosen by Meta. Under the ESI  
4 protocol, which we negotiated, it took some time, but in the  
5 first instance Meta gets to choose whose documents were  
6 searched. Under that protocol and under that agreement, we  
7 have the opportunity now to suggest additional custodians  
8 and additional search terms.

9 THE COURT: And when did you suggest additional  
10 custodians?

11 MR. SAVERI: Several weeks ago, your Honor.

12 THE COURT: Several weeks ago? When is --

13 MR. SAVERI: I think -- well, I think it was  
14 August 22nd. Your Honor --

15 THE COURT: -- the discovery cutoff?

16 MR. SAVERI: I beg your pardon, your Honor?

17 THE COURT: When is the discovery cutoff?

18 MR. SAVERI: The discovery cutoff's at the end of  
19 this month, your Honor.

20 THE COURT: So, August 22nd you proposed  
21 additional custodians when the discovery cutoff was  
22 September 20th?

23 MR. SAVERI: Yes, your Honor. That's because the  
24 substantial --

25 THE COURT: I'll tell you -- Mr. Saveri, let me

1 cut you off, okay? I'll tell you why it's because. It's  
2 because --

3 MR. SAVERI: I'm sorry. What, your Honor?

4 THE COURT: You said, "that's because." I'll tell  
5 you why. It's because and your -- whatever team you've  
6 assembled, has not been litigating this case as if the  
7 December 30 cutoff is a real cutoff. You are not doing your  
8 job in this case.

9 MR. SAVERI: Your Honor --

10 THE COURT: This is an important case, and the --  
11 you are teed up to get a ruling that I think would be the  
12 first ruling on whether this is fair use. And you're not --  
13 you're not doing your job to work the case up.

14 MR. SAVERI: Your Honor --

15 THE COURT: You're not -- you have not even come  
16 close to moving the ball forward in this case.

17 MR. SAVERI: Your Honor, if I may?

18 THE COURT: Yeah.

19 MR. SAVERI: I think that's 100-percent wrong,  
20 your Honor. I think that we had a -- when we agreed and you  
21 ordered a not -- the discovery cutoff to end at the end of  
22 September, at that time we -- we had -- it was December, and  
23 in January and February we propounded discovery requests.

24 Now, from that point forward, there was a substantial  
25 completion deadline which you set, which is in the middle of

1 July. We -- from that -- from the time we produced -- we  
2 propounded the discovery in December, we didn't get any  
3 documents from the Defendants until, I believe, if my notes  
4 are right, until -- excuse me, until -- until August 9.  
5 That's when we got the first (indiscernible) --

6 THE COURT: Say that -- can you say that one more  
7 time? You propounded the --

8 MR. SAVERI: August 9th, sir. August 9th, your  
9 Honor.

10 THE COURT: You made document requests in  
11 December, and you didn't get any documents until August 9th,  
12 is that what you said?

13 MR. SAVERI: It is what I'm saying, your Honor.  
14 And then we received subsequent productions. They trickled  
15 in August 9th again, August 15th again, August 29th, August  
16 30, August 30 again, September --

17 THE COURT: So now -- so are --

18 MR. SAVERI: Excuse me, your Honor. There's more.

19 THE COURT: I think you -- I think you need to be  
20 really careful about the representations that you're making,  
21 because I'm -- you know, I'm concerned that what you're  
22 saying is not accurate.

23 MR. SAVERI: Okay.

24 MS. HARTNETT: Your Honor, we can also  
25 (indiscernible) --

1 MR. SAVERI: Your Honor, I did --

2 THE COURT: Mr. Saveri -- Mr. Saveri, can you hold  
3 on just a second?

4 MR. SAVERI: Yeah. Absolutely.

5 THE COURT: I'm concerned that you might be sort  
6 of reaching, you know, sanctions territory here in what  
7 you're saying.

8 MR. SAVERI: Well, I --

9 THE COURT: I want you to -- I want to urge you  
10 to be careful.

11 Ms. Hartnett, go ahead.

12 MS. HARTNETT: Thank you, your Honor. And I -- my  
13 colleague, Mr. Lauter or Mr. Ghajar should also jump in.  
14 But we've produced I believe 16,998 documents by July 15th,  
15 the substantial completion date, out of approximately 20,000  
16 documents produced to date.

17 And so that means that several -- there was a  
18 productions -- productions were made before July, including  
19 in April when we -- we shipped the drive with the dataset  
20 that Mr. Saveri was saying he was deprived of, we shipped  
21 that in May, May 9th for delivery May 10th.

22 So I can -- we have provide a more exhaustive list, but  
23 the main point here is that we met the substantial  
24 completion deadline in July. We made productions before  
25 that, and there's been a bit of production since then to

1 address a couple of issues they had identified about some  
2 documents that did not fully reproduce, and some other  
3 follow-ups. So --

4 MR. SAVERI: Your Honor --

5 MS. HARTNETT: -- that's just wrong.

6 MR. SAVERI: Your Honor?

7 THE COURT: Yes.

8 MR. SAVERI: The dates that I gave you, the two  
9 August 9ths, the August 15th, the August 29, the two August  
10 30ths, the two September 10ths, and the one last week were  
11 all after the original substantial completion. It is true  
12 when --

13 THE COURT: Hold on a second. But that's not what  
14 you said. I believe you, that they may -- other additional  
15 documents may have come in after the substantial completion  
16 deadline, but that's not what you said. You said that you  
17 didn't receive any documents until August something.

18 MR. SAVERI: Your Honor, if I said that, I did  
19 misspoke -- misspeak.

20 THE COURT: Okay. So we've got a real -- we have  
21 a real problem here, right? And here's the problem. It's  
22 very -- it clear to me from the papers, from the docket and  
23 from talking to the Magistrate Judge, that you have brought  
24 this case, and you have not done your job to advance it.  
25 It's very clear, okay. And now you're in court making false

1 representations about the -- when you first received  
2 documents in the case. I don't know, maybe you're doing  
3 this because I previously sanctioned Meta and its lawyers  
4 for discovery abuses. Maybe you're somehow like thinking  
5 that you could take advantage of that.

6 But I assure you, Mr. Saveri, that I'm going to look at  
7 every case individually. And it's obvious in this case,  
8 that Meta has been litigating the case as if September 30th  
9 is an actual discovery cutoff. And you and your team have  
10 barely been litigating the case. That's obvious.

11 And so, here's what I'm going to tell you, all right.  
12 And, moreover, this is an important case, right? This is  
13 not -- this is not your typical proposed class action. This  
14 is an important case. It's an important societal issue.  
15 It's important for your clients. It's important for the  
16 proposed class members. It's important for society.

17 And, you know, you and your team appear to have taken  
18 on a case that you are either unwilling or unable to  
19 litigate properly. And so, I will tell you right now that  
20 if this case gets to the class certification stage, I will  
21 not certify class represented by this legal team based on --  
22 based on the way you've litigated the case so far.

23 I think what you need, frankly, is to bring in -- bring  
24 in somebody who can help you litigate the case. Who has the  
25 resources and the wherewithal to move this case forward.

1 Somebody like Sussman Godfrey or somebody like that who  
2 actually has the ability to take on a complex matter like  
3 this and litigate it properly. I think you need to  
4 reconstitute your legal team.

5 And I will tell you, that I -- based on what I've seen  
6 so far, there is no way that I will -- that I would grant  
7 class certification. There is no way that I would find  
8 adequacy of representation based on the representation that  
9 I've seen take place thus far, okay.

10 I feel like I'm in a little bit of a bind here, because  
11 -- and I don't know if maybe the Defendants can speak to  
12 this. And, you know, the Defendants don't need to convince  
13 me that we are here today because the Plaintiffs have failed  
14 to move the case forward. I understand that.

15 But I'm in a little bit of a difficult position because  
16 it is such an important case, and, you know, I -- if I deny  
17 the motion to extend the discovery cutoff, right, it may be  
18 that, you know, I am not going to be able to adjudicate the  
19 question that is presented at summary judgment on a proper  
20 record, right.

21 So maybe the answer is, fine, I deny the motion to  
22 extend the discovery cutoff, and then I -- if there's no  
23 proper record, that's the Plaintiff's fault, and so they  
24 lose their case and some other plaintiffs are going to have  
25 to bring a case against Meta, right, on this issue. Maybe



1 that's the answer.

2 But, you know, I -- you know, courts, district courts  
3 have a responsibility to proposed class members, to make  
4 sure that their interests are protected. I'm not sure their  
5 interests have been protected thus far, and I don't -- I  
6 don't know if I'm protecting the interests of the proposed  
7 class if I, you know, simply deny the, you know, the motion  
8 to extend the cutoff and to alter the case schedule, and  
9 then we barrel towards summary judgment on a totally  
10 inadequate record.

11 So, what -- I still don't -- I'm left wondering what I  
12 should do, how I should handle this.

13 MS. HARTNETT: Your Honor, I would be happy to  
14 address that. This is Kathleen Hartnett.

15 THE COURT: Could I -- before you address that,  
16 let me ask one question. There's somebody named Christopher  
17 Young raising their hand. Is that a member of the legal  
18 team?

19 MR. SAVERI: I believe so. He's one of our team,  
20 your Honor, and he's got --

21 THE COURT: What do mean, you believe so?

22 MR. SAVERI: He -- I don't know if he -- I can't  
23 see whose hands are raised, your Honor.

24 THE COURT: But Christopher Young is a member of  
25 your legal team?

1 MR. SAVERI: Yes, sir.

2 THE COURT: Okay. So, Bob, now you can go ahead  
3 and let him into the courtroom.

4 All right. Sorry, Ms. Hartnett.

5 MS. HARTNETT: Thank you, your Honor. And we  
6 appreciate not repeating the points about diligence. I  
7 think that in the debate between the parties about that,  
8 what may have gotten lost a little bit in translation is the  
9 substance, which is that this case will be properly  
10 discovered if we have a short extension or just allowance  
11 for a few depositions to take place the first week of  
12 October.

13 We've been trying to work that out with Plaintiff's  
14 counsel. I think they are delaying fully responding to our  
15 proposal until this hearing today, but we basically have  
16 been able to, despite these challenges that we've explained  
17 in our briefing, complete depositions.

18 We've had three of the Plaintiff's already taken. We  
19 are -- have, I believe four of them set, and three need to  
20 be scheduled, too, because of illness shortly before the  
21 deposition. Defense depositions have been taking place and  
22 are currently. We're preparing our witnesses to complete  
23 those within the discovery period or shortly thereafter.

24 And so, just from my client's perspective, which has  
25 truly worked hard and in good faith to try to make the

1 production that will allow this Court to adjudicate the  
2 important you note.

3 Our strong recommendation would be to make the slight  
4 modification to the schedule that will be necessary to allow  
5 the depositions to complete. There's been no showing of  
6 need for more than the 10 depositions normally allotted, and  
7 we are actually willing to forego two Plaintiff depositions  
8 to adhere to the, you know, the default allotment and to the  
9 schedule.

10 And then the point you raise about adequacy and class  
11 cert, that obviously is an important point that should be  
12 addressed in due course. But just from my client's  
13 perspective, we'd prefer not to have to re-litigate the  
14 whole case, because we have been doing it properly. And  
15 notwithstanding some of these challenges, we have produced a  
16 record that will allow you to make your decision on a full  
17 record.

18 And so we would respectfully --

19 THE COURT: What's hard for me -- I guess for me  
20 sitting here right now, it's hard for me to know whether  
21 that's true or not, right. I mean, I -- that's something  
22 that I would have to access. But what happened -- what  
23 happens if we -- you know, if I grant the short extension  
24 that you're contemplating, we get to summary judgment, and  
25 all of the sudden I conclude that there are a bunch of

1 unanswered questions?

2 MS. HARTNETT: Well, I do think at that point that  
3 you would grant us -- I mean, we believe we'd be -- if  
4 there's a deficiency in the record due to Plaintiff's  
5 failure to prove its case, then we should win at summary  
6 judgment. I don't think this is going to be so below the  
7 standard that it's going to be an absence of counsel for the  
8 Plaintiffs.

9 And so, you know, we are -- we are having normal  
10 depositions now that we're having them. That we finally  
11 kind of got into the mode of actually listening to the  
12 schedule and responding to it. We're getting ready for all  
13 those. We're all flying around to complete them. And so, I  
14 do think the message has gotten through, that this actually  
15 has to be litigated as a case.

16 And so I guess my main point is just that my client's  
17 undertaken a lot of time and effort to make sure that we are  
18 being responsive. I don't think there's any -- I don't  
19 believe, and my colleagues can step in, there are just no  
20 massive gaps in information that are going to be in the  
21 discovery record. It's all been overblown just to be able  
22 to try to get more time to complete depositions they didn't  
23 want to take.

24 MR. YOUNG: Good afternoon, your Honor.  
25 Christopher Young for the Plaintiffs. Would you mind if

1 jump in for a second and just -- just briefly expand upon  
2 what Mr. Saveri was kind of gesturing at earlier.

3       So we do believe that additional discovery is going --  
4 need to be taken. Partially because of the inadequate  
5 protection as is. So, the original substantial completion  
6 deadline was July 2nd. In accordance with the Professional  
7 Guideline Rules in the Northern California, we graciously  
8 gave Meta a two-week extension. Since then over 12,000  
9 pages of documentary evidence have been produced.

10       This case is going to involve a lot of data. We've had  
11 6.6 terabytes of data produced in the last three -- three  
12 weeks alone. That stuff will need to be examined by our  
13 experts. Our current opening report deadline is October  
14 11th. So it -- but there's a lot of pressure being put  
15 on --

16               THE COURT: Have you hired experts yet?

17               MR. YOUNG: Yes. We have retained experts. We  
18 have disclosed experts consistent with the protective order,  
19 your Honor.

20       We have been thoroughly litigating this case. The  
21 production itself is insufficient. We have received a  
22 privilege log which does not identify, for example,  
23 attorneys, does not identify Bates numbers of the documents  
24 that are being redacted. Many of the documents are  
25 redacted. And having sat -- having taken a deposition just

1 three days earlier, your Honor, it does seem that legal  
2 advice may become an issue in this case.

3 So, we will have to tee up -- we potentially may have  
4 to tee up a privilege log challenge, your Honor. And we are  
5 -- we have -- we have sent letters and we are currently in  
6 the process of meeting and conferring about the privilege  
7 log.

8 With respect to the document production itself, there  
9 have been serious deficiencies that have been systemic  
10 throughout Meta's production. Meta has recently this week  
11 committed to rear-viewing all of the redactions in their  
12 production because the production has been so deficient. It  
13 has seriously inhibited our efforts to take these  
14 depositions, because we do not know what is being properly  
15 redacted and what needs to be challenged and rear viewed.

16 MS. HARTNETT: Your Honor, if I may. What -- I  
17 mean, with respect, those accusations are unfounded and  
18 overblown and inappropriate. They're not supported by  
19 what's happening right now. There have been some relatively  
20 minor privilege log consistency of redaction issues that we  
21 have resolved for the Plaintiffs when they've identified  
22 them.

23 There is no systematic issue with our document  
24 production. There's also some Google Docs, NGC Docs that  
25 don't print out exactly like you might see on the printout,

1 but that we've been able to make sure they have the actual  
2 underlying data.

3       So I -- I'm surprised to hear this, especially in light  
4 of your Honor's admonitions about accuracy on the record,  
5 because that is just untrue. I don't believe any -- we have  
6 any indication of any deposition being impaired to date,  
7 other than, frankly, the Plaintiff's failure to produce  
8 privilege logs for all but two of their -- two of the  
9 Plaintiffs. But, again, we're going through this, and I do,  
10 I just think there's nothing in the record.

11       And again, I do seek my colleagues input if I'm  
12 overlooking something that will prevent you from making a  
13 decision on this record. What they're seeking are just,  
14 honestly, quibbling with the small things that happen in any  
15 litigation. There's nothing of moment here, and Judge  
16 Hixson has promptly resolved each dispute that's been  
17 brought to him so far.

18       We're not sure exactly why they're doing this, but  
19 there really is just not an issue here, other than  
20 completing these depositions in the next two weeks.

21               MS. DJORDJEVIC: Your Honor, may I say something?

22               THE COURT: Sure.

23               MS. DJORDJEVIC: Thank you. This is Nada  
24 Djordjevic for Plaintiff Lisa TerKeurst. I need to point  
25 out, my client is in a slightly different position than the

1 others. Her claims were consolidated into this case in  
2 July. Magistrate Judge Hixson has ruled that her responses  
3 to everything have been timely, appropriate. We are  
4 producing documents in this case. And Meta is aware and Ms.  
5 Hartnett is aware that we have -- Plaintiffs generally have  
6 raised issues with their production that are still being  
7 hashed out. So I don't think it's fair to suggest that  
8 anyone is misrepresenting --

9 THE COURT: Sorry. You said your client joined  
10 the case in July?

11 MS. DJORDJEVIC: Yes, sir.

12 THE COURT: So, you filed a separate lawsuit in  
13 another --

14 MS. DJORDJEVIC: Separate lawsuit, yes, that was  
15 consolidated in July.

16 THE COURT: Consolidated into this in July of  
17 2024?

18 MS. DJORDJEVIC: Correct, your Honor.

19 THE COURT: And was that pursuant to stipulation?  
20 How did that happen? I'm not remembering that.

21 MS. DJORDJEVIC: I believe it was pursuant to  
22 stipulation. Months' worth of negotiations were required  
23 for that stipulation, but it was pursuant to stipulation,  
24 yes.

25 So I just want to make sure that my client's interest



1 are -- are, you know, protected. And to the extent that  
2 your Honor is considering an extension, I understand that  
3 Meta would prefer to only be a week, but given how recently  
4 my client has come into the case --

5 THE COURT: But why would you -- I guess I'm  
6 confused. Like why would you stipulate -- if you filed a  
7 separate lawsuit on behalf of your client, and it's a --  
8 when did you file the lawsuit?

9 MS. DJORDJEVIC: So, we filed the lawsuit, I  
10 believe in 2023. I wasn't on it yet. Actually, in New York  
11 against Bloomberg and Meta. Meta then had that -- the Meta  
12 specific portion of that lawsuit transferred over to  
13 California.

14 THE COURT: Okay.

15 MS. DJORDJEVIC: It was related with this case,  
16 but the consolidation did not actually happen until July.

17 THE COURT: Okay. I mean, if you were --

18 MS. DJORDJEVIC: But we have not had the same  
19 opportunity yet to --

20 THE COURT: So when it was --

21 MS. DJORDJEVIC: -- flip as much as we can, but  
22 we've not had the same opportunity to push this case  
23 (indiscernible).

24 THE COURT: It is -- it was -- when was the --  
25 your case -- when did your case come here and when was it

1 related to the --

2 MS. DJORDJEVIC: I believe it was related on July  
3 7th. Don't quote me on the date --

4 THE COURT: Of 2024?

5 MS. DJORDJEVIC: -- but early July of 2024. Yes,  
6 your Honor.

7 THE COURT: So why would you -- why would you  
8 agree to have your case consolidated into this case if there  
9 was a discovery deadline two months later in this case?

10 MS. DJORDJEVIC: I mean, our understanding at the  
11 time was the discovery was proceeding as appropriate. The  
12 cases were related, I believe, back in January.

13 MS. HARTNETT: If I may? Their stipulation -- it  
14 was well-known that Ms. TerKeurst would be part of this  
15 litigation for months before the stipulation actually  
16 finally got finalized and filed. It was just a long process  
17 for various reasons to negotiate that.

18 Being the person that's taking Ms. TerKeurst's  
19 deposition in Charlotte, she's actually producing thousands  
20 of pages throughout this week, which is a major burden to  
21 us. We're getting through them. We will get ready to take  
22 her deposition, but I'm really unclear on what points are  
23 being raised here with respect to Meta's production.  
24 There's been nothing in Meta's production that I believe has  
25 raised any issue for Ms. TerKeurst.

1 MR. GHAJAR: And if I could add to that, your  
2 Honor. Ms. Djordjevic suggests that her client would like  
3 an opportunity to do something differently. As far as we're  
4 aware, and I'm speaking on behalf of Meta, the discovery  
5 that we received from her lone client is the exact same  
6 discovery served by the rest of the Plaintiffs. There's no  
7 unique discovery. They have access to all of the same  
8 thousands of documents we produced months ago, and  
9 presumably, had access to them before the consolidation was  
10 finalized.

11 And so, it seems a bit like window dressing or  
12 exaggeration to suggest that Ms. TerKeurst hasn't had an  
13 opportunity to conduct discovery. She has. She's decided  
14 to file the exact same responses and the exact same requests  
15 as the rest of the Plaintiffs. So, I think that that excuse  
16 doesn't carry any weight.

17 I want to go back to the top of hearing, if I may,  
18 because I'm --

19 MS. DJORDJEVIC: Can I respond to your comment  
20 first?

21 THE COURT: No.

22 MS. DJORDJEVIC: -- before you move on to another  
23 point, if that's all right?

24 THE COURT: No.

25 MR. GHAJAR: I'd like -- thank you, your Honor.

1 Your Honor is concerned about having a full record.  
2 We've produced document sufficient, more than sufficient to  
3 show the way the models -- what's in the models. They've  
4 had the training data for months. They've hired experts to  
5 examine the training data. They finally got around to  
6 sending somebody to our offices to inspect the data. They  
7 spent a couple of days in our offices doing that.

8 Your Honor, this is a case where Plaintiffs will have  
9 to show that they have valid copyrights. That they have  
10 standing, they own the copyrights, and that their works were  
11 in a dataset used by Meta or other -- and other companies.  
12 They have all the information they need for that.

13 In fact, they possess information on their own standing  
14 and their own copyrights. So it's been like prying --  
15 prying to get that out of them, but we've gotten it out of  
16 them. That's our burden. We're going to have a record on  
17 that.

18 As to fair use your Honor has heard argument from  
19 counsel about transformativeness, and, your Honor, they  
20 don't need any more discovery on that. It is really trying  
21 to nibble around the edges to point fingers as an excuse for  
22 their own lack of diligence. They have what they need. The  
23 record is fulsome.

24 There is no additional information that they need from  
25 our client in order to proceed with the case. And to either

1 disprove that theories should be applicable here, or to  
2 prove their burdens as Plaintiff to show that they have  
3 valid copyrights they own and they have standing to assert  
4 them, and that their works were used without permission.

5 THE COURT: Let me -- I'm trying to think -- I'm  
6 trying to think about this practically. And we have -- so  
7 the current schedule is, discovery -- fact discovery cutoff,  
8 September 30th, right? And then you've got expert  
9 discovery. And then there -- we scheduled a hearing on  
10 summary judgment as to the named plaintiffs. And when is  
11 that hearing supposed to be?

12 MS. HARTNETT: March.

13 MR. YOUNG: March, your Honor.

14 THE COURT: And so then, you know, you'll have a  
15 ruling in March or April on that.

16 And, you know, I suppose ones practical way of dealing  
17 with this is to say, look, it's obvious that the Plaintiffs  
18 have not diligently pursued the case. It -- we're not going  
19 to extend the discovery cutoff, except for maybe the short  
20 extension that Ms. Hartnett is talking about, and I can ask  
21 more about the details of that proposal in a second. We'll  
22 go to summary judgment.

23 And then, you know, if we, you know, if we get to the  
24 point where, you know, that at the summary stage, obviously  
25 the Plaintiffs are free to make whatever argument they want

1 about how they've been prevented from getting information  
2 that they need, you know, to fight of a summary judgment  
3 motion. Or maybe Meta is right, that I have all the  
4 information I need to decide it on summary judgment.

5 And if I, you know, if I decide it on summary judgment  
6 and I deny summary judgment, and I say there needs to be a  
7 trial on fair use because there are these -- you know,  
8 because there are, you know, factual issues that a jury  
9 would need to decide before I could I render a ruling on  
10 fair use, then we could have a discussion about whether any  
11 additional discovery would need to be done before trial.  
12 Because we still have -- we would still have the class  
13 certification phase. And, you know, if additional merits,  
14 discovery needs to be done during that time, that would be  
15 fine. But that would have the benefit of not delaying the,  
16 you know, the case schedule in the meantime.

17 MR. YOUNG: Your Honor, if I may?

18 THE COURT: Sure.

19 MR. YOUNG: Your Honor, this -- you know,  
20 candidly, this kind of puts us in a difficult position,  
21 because we kind of feel like we're in this position because  
22 we granted Meta time to complete their discovery, and in our  
23 view -- and to give us their privilege log. And in our  
24 view, even with that additional time, their production and  
25 privilege log has been in our view grossly deficient. And

1 what we're hearing right now is, we're being put in a very  
2 difficult situation where we have to litigate to summary  
3 judgment on what we believe is an insufficient record.

4       You know, just to make the record, when Meta has asked  
5 for every extension, we, consistent with Northern District  
6 of California Practice Guideline Four, gave them the  
7 extensions without any question. Perhaps the error was ours  
8 in not raising discovery disputes earlier or --

9       THE COURT: Definitely the error -- to the extent  
10 that you have legitimate discovery disputes, and I have no  
11 way of telling whether you do, but to the extent that you  
12 do, it was definitely your error in not raising them  
13 earlier.

14       MR. YOUNG: Well, your Honor, you know --

15       THE COURT: And that's part of -- part of how you  
16 have failed to adequately and diligently pursue the case.

17       MR. YOUNG: Well, your Honor, you know, consistent  
18 with this Court's, you know, practice guidelines and  
19 (indiscernible) on a conference, we've always tried to  
20 resort to court intervention, you know, only as a last  
21 resort, your Honor. And, you know, part of the  
22 (indiscernible) --

23       THE COURT: Well, I'm quite confident -- knowing  
24 Judge Hixson, I'm quite confident that he said to, and I  
25 probably also said to you at the outset of this case, don't

1 wait until the 11th hour to bring discovery disputes to  
2 Judge Hixson. And I know that he feels that way, and I'm  
3 sure he's admonished to that effect as well. You don't --  
4 you know, you don't wait until the last minute to bring  
5 these discovery disputes to the judge.

6 And I don't even know if you have any legitimate  
7 discovery disputes to be honest with you. You know, it  
8 doesn't -- as far as I can tell, this has just been a case  
9 -- maybe you -- maybe there's an issue with the privilege  
10 log, maybe there's not, I don't really know. But, you know,  
11 I can't really -- I mean the first thing out of the mouth of  
12 the Plaintiffs was that they hadn't received any documents  
13 until August 12th or something like that.

14 So, you're not, you know, you're not exactly -- you  
15 know, your assertion that there's a problem with the  
16 privilege is not something that I can accept at face value,  
17 let's put it that way.

18 What I -- here's what I will say. What is -- let me  
19 just ask the -- and, sorry, Ms. Djordjevic. You wanted to  
20 respond very briefly to something about your case. You said  
21 that -- you said that your case came in and was related not  
22 in July, but in January, right?

23 MS. DJORDJEVIC: It was related in January,  
24 consolidated in July.

25 THE COURT: You've had since January to do -- to



1 move discovery forward with respect to your client, right?

2 MS. DJORDJEVIC: I don't believe that's the case,  
3 your Honor.

4 THE COURT: Why not?

5 MS. DJORDJEVIC: Because I don't think any  
6 discovery was served on us in this case until after we  
7 joined in July. There was discovery from the earlier case  
8 that was stayed (indiscernible) --

9 THE COURT: But what about discovery --

10 MS. DJORDJEVIC: -- about that.

11 THE COURT: But are you -- you're complaining that  
12 discovery was served on you too late, or that you were --  
13 you were unable to get discovery from them relating to your  
14 client?

15 MS. DJORDJEVIC: I'm not complaining about either.  
16 That's why I wanted to respond to Mr. Ghajar. And I  
17 apologize. I don't know how he actually pronounces his last  
18 name.

19 THE COURT: Ghajar.

20 MS. DJORDJEVIC: That I'm not trying to make an  
21 excuse what we did or didn't do. I just want to protect my  
22 client's interests by saying, to the extent that you are  
23 willing to grant an extension, that it be more than the week  
24 Meta is doing, just because I need -- again, I'm just  
25 putting this on the record to protect my client's own

1 interests, if nothing else, to allow enough time. A number  
2 of disputes have been raised with Magistrate Judge Hixson  
3 recently, and he's ruled on them under the current deadline,  
4 with the caveat that if your Honor didn't grant an  
5 extension, he would look at again at some of them.

6 I think it would at least be fair, because we contend  
7 there are some privilege -- not privilege, remaining issues  
8 with the production, privilege, whatnot. Meta says not --  
9 to at least allow enough additional time to let Magistrate  
10 Judge Hixson and the parties address those on the merits,  
11 because right now there's so little time left, it isn't  
12 possible to get you the information that would let you know,  
13 were there real disputes.

14 THE COURT: Ms. Hartnett, what is your -- what is  
15 -- Ms. Hartnett, what's your proposal for an extension?

16 MS. HARTNETT: Well, just on that last point, I --  
17 the only -- I believe the only motion that Judge Hixson  
18 deferred on was whether to expand the number of depositions,  
19 where the Plaintiffs were seeking a massive expansion, and  
20 he said, not under the current case schedule.

21 Otherwise, he's been resolving other disputes based on  
22 the current record. I believe the parties have until seven  
23 days after the cutoff to bring those motions, if I'm not  
24 mistaken. And so, therefore, there's not an issue with any  
25 -- we can resolve those things, and if there's additional

1 production that needs to be made, that will get resolved.

2 So I don't think that's an issue with the current schedule.

3       The only issue with the current schedule is that  
4 technically (indiscernible) after the 30th of September  
5 under the current schedule, unless the parties agree. We  
6 have tried to reach agreement on that. And so what we would  
7 request is to allow depositions to occur, I would say maybe  
8 the first two weeks of October, just to make that we are  
9 able to actually complete them. That would be our proposal.

10       And, also, we did look closely at the schedules, with  
11 the eye of keeping the March date on calendar, and we  
12 believe the expert deadlines could all probably be advanced  
13 one week, giving the parties a little bit more time for  
14 opening, rebuttal and reply reports. And that would -- so,  
15 moving each of those days a week forward would give us a  
16 little more room there to get that done.

17       So we would say, if anything, two weeks for  
18 depositions, not additional fact discovery, just the  
19 finishing of depositions, and the one week for those three  
20 expert deadlines.

21               MR. GHAJAR: If I could --

22               THE COURT: Okay.

23               MR. GHAJAR: Could I -- could I add to my  
24 colleague's remarks? It's the depositions, your Honor, the  
25 reason we're in this situation is some of the Plaintiffs are

1 not available during the discovery cutoff. So it's to  
2 complete the depositions identified, not new depositions.

3 So, for example, I'm in New York right now. I was to -  
4 - I was supposed to take Mr. Coates' deposition today. He  
5 fell ill and cancelled the morning of. And I'm -- we're  
6 trying to find another date. It may be beyond the discovery  
7 cutoff. So that's the type of rescheduling we're talking  
8 about.

9 The same thing happened with Ms. Silverman, scheduled  
10 to take her deposition last Friday. The day before she fell  
11 ill. The only dates offered to us are after discovery  
12 cutoff. So when my colleague, Ms. Hartnett, is talking  
13 about additional time for depositions, we want to make clear  
14 it's for the depositions that have been noticed, not a new  
15 swath of them.

16 MS. HARTNETT: Correct.

17 THE COURT: Okay. So here's what I'm going to do.  
18 For now, I'm going to -- I'm going to extend the discovery  
19 -- fact discovery cutoff by 14 days for the purpose of  
20 taking depositions that couldn't be scheduled before the  
21 discovery cutoff.

22 I will extend the expert -- what is it, the expert  
23 disclosure and rebuttal expert disclosure dates by seven  
24 days. Is that what you're proposing?

25 MS. HARTNETT: Yes. It's opening, rebuttal and

1 rely.

2 MR. SAVERI: Yeah. Your Honor, I -- we have set  
3 it up so there's two dates. Each party does it at the same  
4 time, and then there's simultaneous rebuttal. So it's those  
5 days.

6 THE COURT: So it seems like you -- the two of you  
7 just said inconsistent things. It seems like Ms. Hartnett  
8 was saying there's opening and opposition and rebuttal and  
9 -- or opening and rebuttal and reply. And you were saying  
10 that there was simultaneous opening and simultaneous  
11 rebuttal. Which is it?

12 MR. SAVERI: I understand it's on the -- the  
13 opening opinions would be on the issues that we have the  
14 burden of proof.

15 THE COURT: Okay. Well, what's the answer?  
16 Somebody -- this a --

17 MS. HARTNETT: Yeah. I just pulled this from the  
18 scheduling order.

19 THE COURT: -- this a provable issue. There  
20 shouldn't a dispute of fact on this issue.

21 MR. SAVERI: In any event, your Honor, we're fine  
22 with slipping the dates to that interval that we're talking  
23 about.

24 THE COURT: And, Ms. Hartnett, sorry. You said  
25 you were just -- you just pulled the deadlines. What is it?

1 MS. HARTNETT: The case schedule is docket 87.  
2 And I'm just trying to make sure I didn't lose something  
3 here in translation. One second, please. Docket 87 has --  
4 this is your case schedule that you've entered. It has  
5 opening report --

6 THE COURT: Read it again.

7 MS. HARTNETT: Yes. Opening reports, October  
8 11th, rebuttal reports, November 8th, reply reports,  
9 November 22nd. So we -- for those three deadlines, we would  
10 propose moving them a week forward.

11 THE COURT: I don't see in the -- on the docket on  
12 -- I'm sorry, what docket number?

13 MR. SAVERI: Eighty-five.

14 MS. HARTNETT: Eighty-seven.

15 MR. SAVERI: Eighty-seven.

16 THE COURT: That's funny. I don't see reply  
17 reports on there. I see only opening and rebuttal reports  
18 on there, at least in the minute entry.

19 MS. HARTNETT: Yeah. It's in the Exhibit A, the  
20 schedule that you so ordered.

21 THE COURT: Okay. All right. So, anyway, so the  
22 deadlines are -- sorry.

23 MS. HARTNETT: Sorry.

24 THE COURT: October 11th, November 8th, and what?

25 MS. HARTNETT: November 22nd.

1 THE COURT: So you're saying move each of those  
2 dates back by seven days?

3 MS. HARTNETT: Yeah. Although for the 22nd one,  
4 if you do that, it may be better to make that December --  
5 sorry, December 2nd, because seven days would be --

6 THE COURT: The holiday?

7 MS. HARTNETT: Yeah, but we get the day after  
8 Thanksgiving.

9 THE COURT: Okay. That's -- so, I going to -- I  
10 will move those dates as you have proposed. Those dates  
11 will be moved as you've proposed.

12 And I -- you know, you heard what I said about adequacy  
13 of representation. That's relevant at the class  
14 certification stage, but it -- you know, if -- I will say  
15 that if I -- if, you know, Mr. Saveri, if you come in with a  
16 newly constituted team and can articulate clearly what it is  
17 you're missing that is critical for the resolution of the  
18 fair use issue, and you want to file a renewed request for  
19 an extension of time, I'll consider it. But it has to make  
20 -- it has to make very clear, you know, sort of what's  
21 missing that is important to the resolution of the fair use  
22 issue at summary judgment.

23 But I'm not -- I have no confidence in the team that  
24 exists right now to justify pushing this back and doing a  
25 ton more discovery. So I'm -- if you want to file a renewed

1 motion, it has to be with a newly-constituted legal team.

2 MR. SAVERI: Okay. Your Honor, thank you. I do  
3 take your criticism seriously, and I'm confident that I'll  
4 -- we'll be able to address it. But the proof of the  
5 pudding's in the eating. And so, I hear you, your Honor,  
6 100-percent.

7 THE COURT: Okay. But if when you say I'm  
8 confident we'll be able to address it, if what you're saying  
9 is that I'm confident we'll be able to convince you --

10 MR. SAVERI: No, your Honor.

11 THE COURT: -- of adequacy of representation --

12 MR. SAVERI: Yes, yes --

13 THE COURT: -- at the last stage with this team?

14 MR. SAVERI: Yeah. Yes.

15 THE COURT: I would not feel --

16 MR. SAVERI: Not necessary with this team, your  
17 Honor.

18 THE COURT: -- I would not feel confident with  
19 that. Yeah. Okay.

20 MR. SAVERI: I hear you loud and clear. The most  
21 important thing to me that you said -- well, I wouldn't rank  
22 it, but the criticism of the work we've done I take very  
23 seriously. And I -- and the only way I'm going to be able  
24 to prove that is to demonstrate it to you. And I'm not  
25 going to try to tell you that, I aim to prove that to you.



1 And so, I hear on you that, your Honor. That's --  
2 that's all I would say on that point.

3 THE COURT: Okay.

4 MR. SAVERI: Can I ask -- your Honor, can I ask a  
5 question about the summary judgment?

6 THE COURT: Yeah.

7 MR. SAVERI: So, it's not clear to me based on the  
8 discovery that's been taken from some of the Plaintiffs,  
9 exactly what the parameters of the summary judgment motion  
10 are going to be.

11 Is it the case that it's limited to the fair use  
12 defense, or is there more? And we -- if there's more, we  
13 would like to know it now.

14 THE COURT: It seems like in the interest of sort  
15 of moving this case along efficiently and making sure that  
16 it's adjudicated properly, it would be nice to hear from the  
17 Defendants about what I'm going to have to be dealing with  
18 at summary judgment --

19 MR. GHAJAR: Sure, I'll (indiscernible) it.

20 THE COURT: -- to the extent that -- to the extent  
21 that you're able to do so.

22 MR. GHAJAR: Yeah, exactly. To the extent I'm  
23 able to do so, I can preview at least one issue, and there  
24 may be others. And the others are subject to further  
25 investigation and deliberations with my team -- the team and

1 the client.

2 But one of the issues I previewed earlier in the call  
3 is one of standing. Your Honor, just to file a case for  
4 copyright infringement, Plaintiffs need to own the  
5 copyrights, they need the right to sue on the copyrights.  
6 And we believe that that could be an issue with the  
7 Plaintiffs here. I'd rather not get into any more detail,  
8 but there would be a standing issue that is potentially  
9 easily addressed on summary judgment.

10 And I would reiterate for the Court that it has nothing  
11 to do with the discovery Plaintiffs seek from Meta, and  
12 everything to do with the discovery we have sought from  
13 Plaintiffs.

14 MR. SAVERI: Your Honor, if I may. I -- if there  
15 is a standing issue, I do agree with Mr. Ghajar that that's  
16 -- that doesn't require discovery from the other side.  
17 That's about what our -- whether our Plaintiffs have  
18 copyright protected work and whether they own it.

19 If there's more, I don't -- and especially if we're  
20 proceeding on this kind of advanced schedule, I think it's  
21 fair to the Plaintiffs, particularly given where we are in  
22 discovery, to be advised what summary judgment motions are  
23 intended.

24 THE COURT: Well, I think that Mr. Ghajar was just  
25 -- just going through that, so why don't --

1 MR. SAVERI: I'm sorry. I thought he was done.

2 THE COURT: -- you give him a chance --

3 MR. SAVERI: If there's more, your Honor, I  
4 apologize. I thought he was done.

5 THE COURT: Why don't you give him a chance to  
6 finish.

7 Yeah, go ahead.

8 MR. GHAJAR: Thank you, your Honor. I -- again,  
9 with the caveat that there may be other issues, I'll preview  
10 a second issue. This is non-exhaustive, but we believe that  
11 these are important potential defects.

12 The Plaintiffs have alleged to your Honor in the  
13 complaint that certain of their works appeared in a dataset,  
14 and that Meta used that dataset, so, therefore, there was  
15 copying of their works through that dataset in the training  
16 of certain large language models.

17 What we have seen in the context of revising the  
18 complaint that was filed with you a couple of weeks ago --  
19 your Honor might have seen there was a corrected second  
20 consolidated, amended complaint, is that at least one of the  
21 Plaintiffs sought to remove works from that complaint.  
22 Perhaps we haven't had a chance to exhaust discovery on  
23 this. Perhaps based on a realization, your Honor, that  
24 those works did not appear in the accused dataset.

25 And so I don't think it's groundbreaking to observe

1 that if a dataset was used that does not contain works that  
2 are asserted in the complaint, they cannot form the basis of  
3 a copyright infringement claim. So that is another issue on  
4 which we may --

5 THE COURT: All of that stuff -- I mean, all that  
6 stuff is going to be -- I mean, that's-- that's plaintiff by  
7 plaintiff -- that's going to be a plaintiff-by-plaintiff  
8 thing and a work-by-work thing. It sounds like it's not  
9 necessarily something that might be dispositive of the  
10 entire case, is that right?

11 MR. GHAJAR: No, but appropriate for --

12 THE COURT: Yeah, yeah.

13 MR. GHAJAR: -- partial (indiscernible) judgment.

14 THE COURT: Yes.

15 MR. GHAJAR: Yes, your Honor. Yes.

16 THE COURT: Okay.

17 MR. SAVERI: And, your Honor, I guess my request  
18 is, to the extent that there are summary judgments that are  
19 planned or intended, consistent with what we've done in  
20 other cases, if we're on this kind of track, for the  
21 Defendants to advise us sooner rather than late. We --  
22 instead of playing hide the ball.

23 I don't -- we propounded discovery on that. We don't  
24 know the answer. I thought this would be a good opportunity  
25 to raise it. And so I --

1 THE COURT: Yeah, I know, but you keep -- and then  
2 you keep interrupting him as he's talking. So I don't --

3 MR. SAVERI: I'm sorry, your Honor. I thought he  
4 was done. I apologize again.

5 MR. GHAJAR: Well, I actually was done, your  
6 Honor. But they have not asked -- I'm not aware of a  
7 discovery request asking us to identify all bases you're  
8 considering for summary judgment.

9 MR. SAVERI: Okay. All right.

10 THE COURT: Yeah. I'm not sure that would be an  
11 appropriate --

12 MR. SAVERI: We'll -- we'll take that up, your  
13 Honor. I'm not going to debate what -- where we are on  
14 that.

15 THE COURT: I'm not -- I'm not sure it's  
16 appropriate to make a discovery request about all summary  
17 bases you may be considering, but I do think that in the  
18 interest of efficiency and moving this case along, and with  
19 -- consistent with the position that Meta has taken in its  
20 papers, it would be -- it would be very helpful to the Judge  
21 and the Magistrate Judge, as well as the parties involved,  
22 to identify the issues that we need to get -- be getting  
23 ready to deal with at summary judgment.

24 MR. GHAJAR: Understood, your Honor. Hopefully --

25 THE COURT: Okay.

1 MR. GHAJAR: -- hopefully the additional  
2 background I gave today was relevant and responsive. We  
3 wouldn't normally have --

4 THE COURT: Yeah.

5 MR. GHAJAR: -- gotten into that detail this far  
6 before summary judgment, but I wanted to be --

7 THE COURT: Right.

8 MR. GHAJAR: -- responsive to your Honor.

9 MR. SAVERI: Your Honor, I have one more issue I  
10 want to raise.

11 THE COURT: Okay. Make it quick because we have a  
12 number of parties waiting to --

13 MR. SAVERI: And I -- so, your Honor, part of our  
14 discoveries indicated that the piracy and the copying is  
15 limited to the database that we have in our complaint. So  
16 we're contemplating an amendment, and we'd like to do that  
17 soon. And that's based in part of depositions this week. I  
18 don't want anybody to be surprised by it. If -- maybe we  
19 just make that motion as soon as we can and take it up, but  
20 I certainly wanted to advise everybody about that.

21 THE COURT: And you're saying the copying isn't  
22 limited to the accused databases as it's been referred to?

23 MR. SAVERI: Yes.

24 THE COURT: Meaning copying of your -- of the  
25 works of your clients?

1 MR. SAVERI: Yes, your Honor.

2 THE COURT: And I'm curious. Like is -- would it  
3 matter? Like if they -- if they happen to acquire your  
4 client's works from two different databases and fed them  
5 into the large language model, versus acquiring your  
6 client's work from one database and feeding it into the  
7 large language model, would that make any difference in the  
8 fair use analysis?

9 MR. SAVERI: Yes, your Honor, in a couple ways. I  
10 think the multiplicity of that goes to issues like intent  
11 and scienter. Also, this is a statutory damages case, so it  
12 would change the arithmetic. And so, those are just two  
13 ways off the top of my head.

14 With respect to fair use, your Honor, probably not, to  
15 be fair. I mean, because the -- but I haven't thought that  
16 through entirely, but if that's the --

17 THE COURT: Why did it -- why would it need -- the  
18 other question that pops into my mind is, why does it need  
19 an amended complaint? I mean, if -- you know, there -- you  
20 know, it seems to me that that you have a complaint that  
21 alleges, you know, that they have -- you know, they've  
22 acquired -- you know, there's these -- unauthorized database  
23 that has your client's works. They acquired that. They fed  
24 it into the language model. They didn't have permission to  
25 do that. It's copyright infringement. Whether it's one or

1 two, it's not obvious to me why that needs an amendment to  
2 the complaint. Maybe it does. I'm just saying that I'm --  
3 it's not obvious to me.

4 MR. YOUNG: Your Honor, if I may? I think it does  
5 go into the fair use analysis, particularly with respect to  
6 fair use factors one, which deals with elements of good  
7 faith, willfulness. If you're caught being illegal works  
8 multiple times, that goes to willfulness. That will need  
9 discovery.

10 But it also goes to factor three, substantial --  
11 substantiality of the works. If you're including the same  
12 work multiples times willfully and intentionally, I think  
13 that goes straight to that fair use factor, your Honor. And  
14 also commerciality, your Honor. If you are including more  
15 datasets to make your product more profitable, that seems to  
16 me to do directly towards the commerciality, which is  
17 another fair use (indiscernible).

18 THE COURT: Okay. Well, I just don't think --  
19 that's fine. I mean, I just wanted to ask some initial  
20 questions about that and share my initial reaction to that,  
21 to the extent it's helpful. You have to take my questions  
22 and comments on that with a grain of salt because I've never  
23 thought about it before, but I thought that would be useful.  
24 But obviously we're not resolving that issue here today.

25 MR. SAVERI: And I just -- I'm -- I appreciate



1 that. We're not -- we wanted to raise it. We didn't  
2 anybody to be surprised. We have to consider that.

3 THE COURT: Okay. All right. Thank you very  
4 much.

5 MR. YOUNG: Thank you, your Honor.

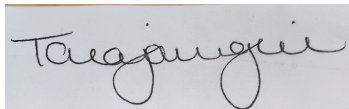
6 MS. HARTNETT: Thank you.

7 (Proceedings adjourned at 2:00 p.m.)  
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1 CERTIFICATE OF TRANSCRIBER

2  
3 I certify that the foregoing is a true and correct  
4 transcript, to the best of my ability, of the above pages of  
5 the official electronic sound recording provided to me by  
6 the U.S. District Court, Northern District of California, of  
7 the proceedings taken on the date and time previously stated  
8 in the above matter.

9 I further certify that I am neither counsel for,  
10 related to, nor employed by any of the parties to the action  
11 in which this hearing was taken; and, further, that I am not  
12 financially nor otherwise interested in the outcome of the  
13 action.

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18 Wednesday, September 25, 2024  
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